

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CHRISTOPHER FRICK,

Plaintiff,

v.

DR. DY, *et al.*,

Defendants.

Case No. C22-801-JHC-MLP

ORDER

**I. INTRODUCTION**

This is a prisoner civil rights action proceeding under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). Plaintiff Christopher Frick, proceeding *pro se* and *in forma pauperis* (“IFP”), is a federal prisoner who was confined at the Federal Detention Center (“FDC”) in SeaTac, Washington.<sup>1</sup>

This matter comes before the Court on Plaintiff’s “Motions to Add”: (1) “Seven Corners”; (2) FDC SeaTac Assistant Health Services Administrator (“AHSA”) Kevin Posalski;

---

<sup>1</sup> Since the filing of Plaintiff’s motions, the Honorable Richard A. Jones temporarily released Plaintiff in on December 14, 2022, for purposes of obtaining treatment for his medical conditions in the community in his underlying criminal case. *See United States v. Frick*, CR21-110-RAJ-1 (W.D. Wash.), dkt. ## 126-27. Plaintiff executed an appearance bond and has a status hearing set for January 20, 2023, before Judge Jones. (*Id.*)

(3) FDC SeaTac Health Services Administrator (“HSA”) “T. Thomas”; (4) FDC SeaTac Warden Israel Jacquez, and (5) the Federal Bureau of Prisons (“BOP”) as defendants in this action (“Plaintiff’s Motions”). (Dkt. ## 39, 42-43.) Defendants have not filed a response in opposition to Plaintiff’s Motions.

Having considered Plaintiff’s submissions, the governing law, and the balance of the record, Plaintiff’s Motions (dkt. ## 39, 42-43) are GRANTED in part and DENIED in part, as further explained below.

### III. BACKGROUND

On September 2, 2022, this Court directed that Plaintiff’s second amended complaint (“SAC”) be served on Defendants. (Dkt. # 26.) In sum, Plaintiff’s SAC generally alleges that, from June 2021 to present, he has suffered various deprivations of his constitutional rights due to Defendants’ handling of his Crohn’s Disease, dental issues, and the COVID-19 pandemic.<sup>2</sup> (*See* SAC (dkt. # 24) at 1-14.) Plaintiff now seeks to join additional defendants in this matter. (Dkt. ## 39, 42-43.)

First, Plaintiff seeks to add “Seven Corners” as a defendant for its alleged failure to maintain or forward his “continuity of care” medical records to Chi Franciscan Health Services. (Dkt. # 39 at 1.) Though unclear from Plaintiff’s Motion, it appears “Seven Corners” operated as Plaintiff’s health care administrator while he was confined at FDC SeaTac. (*See id.*) Plaintiff alleges “Seven Corners” failed to forward his medical records, which caused the cancellation of an August 30, 2022, colonoscopy appointment, after he had already finished colonoscopy preparation. (*Id.*) Plaintiff claims this failure to forward his medical records resulted in deliberate

---

<sup>2</sup> Plaintiff’s claims were previously detailed in full in this Court’s second Order declining service and granting leave to amend. (*See* dkt. # 17 at 2-8.)

1 indifference to his medical needs because of the abdominal pain he suffers from due to his  
2 Crohn's Disease and the resulting delay in receiving medical treatment for his condition. (*Id.*)

3 Plaintiff next seeks to add AHSA Posalski and HSA "T. Thomas" based on their failure  
4 to treat his Crohn's Disease and high blood pressure. (Dkt. # 42 at 1.) Plaintiff alleges that, on  
5 October 31, 2022, in his underlying criminal case, the Honorable Richard A. Jones ordered  
6 AHSA Posalski to provide Plaintiff medical treatment within two weeks for his Crohn's Disease,  
7 high blood pressure, and tooth pain. (*Id.*) Plaintiff notes that he was taken to an outside oral  
8 surgeon on November 3, 2022, to have his tooth pain addressed, at which time he was provided  
9 with blood pressure readings indicative of stage 3 hypertension. (*Id.*) Plaintiff alleges that since  
10 his return from his oral surgery appointment to FDC SeaTac, his blood pressure and Crohn's  
11 Disease have remained unmonitored and unaddressed. (*Id.*) Plaintiff alleges that AHSA Posalski  
12 and HSA "T. Thomas" were both deliberately indifferent to his medical needs by being aware of  
13 his blood pressure readings but failing to monitor them or have them addressed by an outside  
14 medical provider. (*Id.*)

15 Plaintiff further alleges that upon his return from the oral surgeon to FDC SeaTac, he was  
16 prescribed hydrocodone for pain associated with his oral surgery but received ibuprofen in its  
17 place. (Dkt. # 42 at 2.) Plaintiff alleges that ibuprofen is contraindicated for his Crohn's Disease  
18 as its use can cause internal bleeding. (*Id.*) Plaintiff alleges that AHSA Posalski was therefore  
19 also deliberately indifferent to his medical needs in this regard by prescribing a medication that  
20 could cause Plaintiff serious adverse effects. (*Id.*)

21 Finally, Plaintiff seeks to add the BOP as a defendant and to add new claims against  
22 Warden Jacquez. (Dkt. # 43 at 1.) Plaintiff seeks to assert that Warden Jacquez and the BOP  
23 implemented the "Primary Care Provider Team" ("PCPT") health service program, which has

1 led to various deficiencies with his medical care at FDC SeaTac due to inadequate staffing. (*Id.*  
2 at 1.) Plaintiff alleges that he has tried on multiple occasions to utilize the electronic sick call  
3 system as part of the PCPT program to no avail, resulting in inadequate care for his medical  
4 conditions and deliberate indifference to his serious medical needs. (*Id.*) Plaintiff claims he has  
5 suffered for 18 months while at FDC SeaTac due to the failure to provide him medical care for  
6 his exposed tooth nerve, Crohn’s Disease, and high blood pressure, and that his medical  
7 conditions have become life threatening based on his current blood pressure readings and lab  
8 results. (*Id.* at 2.)

### 9 III. DISCUSSION

10 Plaintiff’s Motions seek to join the above-identified defendants and claims pursuant to  
11 Federal Rule of Civil Procedure 15(a).<sup>3</sup> (*See* dkt. # 39 at 1.) Therefore, Plaintiff’s Motions are, in  
12 effect, motions to amend his complaint.

13 Rule 15(a)(1) provides that a party may amend its complaint once as a matter of course  
14 within 21 days after serving it—or if the pleading is one to which a responsive pleading is  
15 required—21 days after service of a responsive pleading or a motion under Rule 12(b), (e), or (f),  
16 whichever is earlier. Fed. R. Civ. P. 15(a)(1). Additionally, Federal Rule of Civil Procedure 20  
17 provides for joinder. Under Rule 20, defendants may be joined in one action if “any right to  
18 relief is asserted against them jointly, severally, or in the alternative with respect to or arising out  
19 of the same transaction, occurrence, or series of transactions or occurrences” and “any question  
20 of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2).

---

21  
22 <sup>3</sup> Though Plaintiff failed to provide any authority for his requested joinder of AHSA Posalski, HSA “T.  
23 Thomas,” Warden Jacquez, and the BOP (*see* dkt. ## 42-43), the Court will construe his *pro se* request  
liberally. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007); *Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th  
Cir. 2013).

1 This Court's Local Civil Rule ("LCR") 15 further imposes requirements for amendment  
2 of a pleading. Pursuant to LCR 15, a party who moves for leave to amend a pleading must attach  
3 a copy of the proposed amended pleading as an exhibit to their motion, indicate how it differs  
4 from the preceding pleading, and must not incorporate by reference any part of the preceding  
5 pleading, including exhibits. *See* LCR 15.

6 This Court previously directed service of Plaintiff's SAC on September 2, 2022. (Dkt.  
7 # 26.) FDC SeaTac Defendants Chief Dentist J. Parker, "Dr. Dy," Unit DC Counselor "Smith,"  
8 Unit DB Counselor "Beihling," Unit Team Supervisor "Fernandez," Warden Jacquez, and HSA  
9 Giles Durano received copies of Plaintiff's summons and complaint by certified mail between  
10 November 9, 2022, and November 12, 2022.<sup>4</sup> (*See* dkt. ## 37 at 2, 38 at 2.) Plaintiff's Motions  
11 were all filed between November 16, 2022, and November 23, 2022, shortly after Defendants  
12 received service. (*See* dkt. ## 39, 42-43.)

13 Plaintiff's Motions are therefore timely filed to allow for amendment of his complaint as  
14 a matter of course. *See* Fed. R. Civ. P. 15(a)(1). Joinder of Plaintiff's newly identified FDC  
15 SeaTac HSA defendants also appears proper. Plaintiff's claims for relief against AHSA Posalski  
16 and HSA "T. Thomas" all arise out of circumstances related to his alleged inadequate medical  
17 care and treatment at FDC SeaTac previously raised in his SAC, and questions of law or fact  
18 common to all of the FDC SeaTac defendants will arise. *See* Fed. R. Civ. P. 20(a)(2).

19 Nevertheless, though Plaintiff will be permitted to amend his complaint, there are several  
20 deficiencies with his sought amendments and joinder. Plaintiff may not file piecemeal documents  
21 comprising his complaint. Instead, Plaintiff must submit an amended complaint, which conforms  
22

---

23 <sup>4</sup> Defendant Scotty Bussell is no longer a BOP employee, and to the Court's knowledge, has not been  
served. (Dkt. # 37 at 1 n.2.) However, on December 16, 2022, the Assistant United States Attorney  
representing Defendants entered a notice of appearance on behalf of Mr. Bussell. (Dkt. # 46.)

1 with the Federal Rules of Civil Procedure and this Court's Local Rules, containing all of his  
2 claims against all of the parties he seeks to proceed against in this action. Any amended  
3 complaint must therefore remedy the deficiencies described below.

4 First, with regard to his addition of AHSA Posalski and HSA "T. Thomas" and claims  
5 against them, Plaintiff is advised that his amended complaint must: (1) identify the individual(s)  
6 whom he alleges caused him harm and the constitutional right he believes was violated by the  
7 conduct of each individual; and (2) allege specific facts demonstrating how each individual  
8 personally participated in causing him constitutional harm. *See Crumpton v. Gates*, 947 F.2d  
9 1418, 1420 (9th Cir. 1991); *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). "The inquiry  
10 into causation must be individualized and focus on the duties and responsibilities of each  
11 individual defendant whose acts or omissions are alleged to have caused a constitutional  
12 deprivation." *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988).

13 Next, Plaintiff must provide the Court with a copy of an amended complaint that  
14 comprehensively incorporates and identifies all of his intended claims and defendants. *See* LCR  
15 15. In particular, Plaintiff must submit an amended complaint that identifies all of his claims  
16 against all defendants and indicates how his amended complaint differs from his SAC  
17 submission and what amendments were made. *See* LCR 15. Plaintiff must not incorporate by  
18 reference any part of his prior pleadings. Any additional claims or defendants sought to be added  
19 will be subject to this Court's review under Rule 15(a)(2) for inclusion. *See* Fed. R. Civ. P.  
20 15(a)(2) ("In all other cases, a party may amend its pleading only with the opposing party's  
21 written consent or the court's leave.").

22 Furthermore, as explained to Plaintiff in this Court's prior screening orders, the BOP  
23 cannot be named as a defendant in this action as there can be no *Bivens* cause of action against a

1 federal agency. *See FDIC v. Meyer*, 510 U.S. 471, 484-486 (1994). Similarly, there can be no  
2 *Bivens* cause of action against “Seven Corners” because it appears it operates as a private health  
3 care benefits contractor for FDC SeaTac. (*See* dkt. # 39 at 1.) The Supreme Court has  
4 barred *Bivens* claims against such entities. *See Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 66  
5 n.2 (2001) (holding *FDIC v. Meyer* “forecloses the extension of *Bivens* to private entities”); *see*  
6 *also Minneci v. Pollard*, 565 U.S. 118, 131 (2012) (declining to extend *Bivens* claim against  
7 privately employed prison personnel and finding prisoner must instead seek a remedy under state  
8 tort law.) Because “the purpose of *Bivens* is to deter individual federal officers from committing  
9 constitutional violations[.]” *Bivens* does not provide an action for damages against private  
10 entities acting under color of federal law. *See Corr. Servs. Corp.*, 534 U.S. at 70-72. Plaintiff is  
11 therefore advised that any amended complaint seeking to add the BOP and “Seven Corners,” or  
12 otherwise seeking to allege claims against them, would be found futile. To the extent, Plaintiff  
13 intends to assert an additional claim against Warden Jacquez, Plaintiff’s amended complaint will  
14 need to identify this separate claim in his amended complaint.

15 Finally, it is unclear from Plaintiff’s Motions and latest exhibit submissions (*see* dkt.  
16 # 45), whether Plaintiff has exhausted administrative remedies with respect to his new  
17 defendants and claims. Thus, Plaintiff is advised that his new claims will be subject to dismissal,  
18 without consideration of the merits of his claims, if he failed to exhaust his new claims through  
19 the administrative remedy process. *See* 42 U.S.C. § 1997e(a); *Albino v. Baca*, 747 F.3d 1162,  
20 1170 (9th Cir. 2014).

#### 21 IV. CONCLUSION

22 Based on the foregoing, Plaintiff’s Motions (dkt. ## 39, 42-43) are GRANTED in part  
23 and DENIED in part. Specifically, Plaintiff’s Motions (dkt. ## 42-43) are GRANTED as to the

1 addition of claims against AHSA Posalski, HSA “T. Thomas,” and Warden Jacquez, but  
2 DENIED as to the BOP. Plaintiff’s Motion (dkt. # 39) as to the addition of claims against “Seven  
3 Corners” is DENIED. Plaintiff is directed to submit an amended complaint conforming with the  
4 Court’s requirements by **January 6, 2023**. Defendants’ deadline to respond to Plaintiff’s future  
5 amended complaint shall remain **February 13, 2023** at this time.

6 The Clerk is directed to send copies of this Order to the parties and to the Honorable John  
7 H. Chun. Given Plaintiff’s release from FDC SeaTac, the Clerk is further directed to send a copy  
8 of this Order to Plaintiff’s last known address at: 27340 Village Place NW, Stanwood, WA  
9 98292.

10 Dated this 22nd day of December, 2022.

11 

12 MICHELLE L. PETERSON  
13 United States Magistrate Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23